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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VALERIE GATES, PHLECIA MCCREA,
and DEZARAE OROURKE individually
and on behalf of all others similarly
situated.

Plaintiffs,

V.

FISHER-PRICE, INC. and MATTEL,
INC.,

Defendants.

| Case No.: 2:24-cv-9953

CLASS ACTION COMPLAINT

- 1. VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE TRADE PRACTICES ACT 815 ILCS §§ 505-1, *et seq.***
 - 2. VIOLATIONS OF NEW YORK'S CONSUMER PROTECTION STATUTE N.Y. GEN. BUS. LAW §§ 349 *ET SEQ.***
 - 3. VIOLATION OF THE NEW YORK'S CONSUMER PROTECTION LAW ("NYGBL") §350, *ET SEQ.***
 - 4. BREACH OF IMPLIED WARRANTIES**
 - 5. UNJUST ENRICHMENT**
 - 6. FRAUD**
 - 7. NEGLIGENT MISREPRESENTATION**

CLASS ACTION COMPLAINT

8. NEGLIGENCE – FAILURE TO WARN

JURY TRIAL DEMANDED

5 Plaintiffs Valerie Gates, Phelcia McCrea and Dezarae O'Rourke ("Plaintiffs"),
6 individually and on behalf of all others similarly situated, brings this Class Action
7 Complaint against Defendants Fisher-Price, Inc. ("Fisher-Price") and its parent
8 company Mattel, Inc. ("Mattel") (collectively, "Defendants") and alleges the following
9 based on personal knowledge as to themselves, and as to all other matters, upon
10 information and belief, including investigation conducted by their attorneys:

NATURE OF THE ACTION

1. Since 2010, Fisher-Price manufactured, marketed, and sold its signature line of “Snuga” swings (“Products”¹), which are inclined infant swings that Defendants have marketed and sold throughout the United States (and beyond) as a safe and suitable environment for infant sleep.

2. Fisher-Price has garnered the trust of parents and caregivers as one of the most well-known manufacturers of products for infants and children for decades. Accordingly, parents and caregivers trust Defendants to fairly and honestly market their products, especially those designed and marketed for infant sleep. However,

¹ The Products include, but are not limited to, all 21 substantially similar models of the Snuga Swing: My Little Snugakitty™ Cradle 'n Swing, My Little Snugabunny™ Swing, My Little Snugabear Cradle 'n Swing, My Little Snugabear Ballerina Cradle 'n Swing, Safari Dreams Cradle 'n Swing, Moonlight Meadow Swing, Sweet Snugapuppy™ Swing, Deluxe Swing- Surreal Serenity™, Sweet Snugamonkey Swing, Blooming Flowers Swing, Fawn Meadows Deluxe Swing, Peek-a-boo Fox Swing, Dots & Spots Puppy Swing, Snow Leopard Swing, Hearthstone Swing, Baby Raccoon Swing, My Little Snugabunny Cradle 'n Swing, My Little Sweetie™ Deluxe Cradle 'n Swing, My Little SnugaMonkey™ Cradle 'n Swing, My Little Snugapuppy™ Cradle 'n Swing, and My Little Snugabear Cradle 'n Swing.

CLASS ACTION COMPLAINT

1 Defendants' marketing was dangerously false and misleading, as the Products are not
 2 safe for infant sleep.

3 3. Rather, inclined infant swings like Defendants' Products are dangerous
 4 and unsuitable for infant sleep. In fact, infant swings pose such a significant risk to
 5 infants that Defendants were forced to recall the Products on October 10, 2024.

6 4. These infant swings are designed to simulate the soothing movement of
 7 being held by a caregiver. Because they are designed to do so, it is both well-known
 8 and expected by Defendants that infants will frequently be lulled to sleep during use.
 9 Defendants themselves have stated that the Products are "designed for soothing or for
 10 short naps."²

11 5. Indeed, Defendants are well-aware that parents are universally seeking
 12 safe ways to help their babies fall asleep faster, which is why they have made safety
 13 representations and omissions that uniformly and intentionally represent to consumers
 14 that the Products are safe for infant sleep. These representations and omissions
 15 regarding the Products' safety can be found on Defendants' social media, websites, and
 16 the websites of Defendants authorized retailers.

17 6. Defendants know that the safety of infants is paramount for parents, which
 18 is why Fisher-Price addresses explicitly its commitment to safety, claiming:

19 **Our Commitment to Safety**

20 Fisher-Price is committed to building relationships with
 21 children and earning the trust of their parents and caretakers.
 22 Since our founding, safety has been our highest priority. For
 23 more than ninety years, we have maintained an unrelenting
 24 focus on product safety, quality, and compliance. We are
 25 proud that families and children choose Fisher-Price again

27 ² *Fisher-Price Cradle 'n Swing User Tips*, YouTube, (Nov. 6, 2015)
 https://youtu.be/WUecSoOOXnY?si=5V4W3QpU2EGEHfyM&t=62 (accessed
 28 November 13, 2024).

1 and again to make childhood more joyful and support parents
 2 through the early months and years of their babies' lives.³

3 7. Defendant Mattel, Fisher-Price's parent company, likewise publicly
 4 expresses its commitment to safety on that same website and launched its own Medical
 5 and Scientific Safety Council, which "works closely with Mattel in providing
 6 professional opinions, advice and recommendations related to product safety, helping
 7 to inform our work and promote safe practices."⁴

8 8. Despite Defendants' public commitment to the safety of consumers, the
 9 Products suffer from a defect wherein they fail to hold and maintain an appropriately
 10 level or flat sleeping surface that is safe and consistent with industry standards and
 11 guidance regarding infant sleep ("Defect"). The Defect renders the Products unsafe for
 12 infant sleep, which is inconsistent with reasonable consumer expectations, contrary to
 13 Defendants' pervasive representations and omissions regarding the safety of the
 14 product, and takes advantage of the trust Defendants have built with their consumers
 15 over the past several decades.

16 9. The Defect exists at the point of purchase and is known to Defendants and
 17 unknown to consumers, including Plaintiffs, at the time of purchase.

18 10. As a result of the Defect, the Products are unable to conform to the
 19 promises and representations made by Defendants, and the Products are inherently
 20 unsafe as an infant swing suitable for infant sleep, and are thus, unfit for their intended
 21 use.

22 11. Defendants failed to adequately warn Plaintiff and Class Members that the
 23 Product contains the Defect, is not safe or suitable for infant sleep, and could cause and
 24 has caused infants to be at risk.

25 _____
 26 ³ *Safe Start*, Mattel.com, <https://shop.mattel.com/pages/safe-start> (accessed November
 27 13, 2024).

28 ⁴ *Id.*

1 12. Defendants' misrepresentations and omissions regarding safety have
 2 convinced reasonable consumers that the Products can provide a *safe* sleep
 3 environment, but this is not the case. The Defect positions the infant at a head-to-toe
 4 incline and significantly increases the risk that the infant's head will slip into a
 5 dangerous position, tilt to constrict the windpipe, and/or cause the infant's face to
 6 become pressed against the padded fabric in the sleeper and block airflow, all of which
 7 the infant may be unable to correct. This increases the risk of death by asphyxiation
 8 and makes it impossible to ensure safe sleep conditions for infants.

9 13. The design of the Products can also lull infants into a deeper sleep than
 10 normal, making it more difficult for them to wake up if their airflow becomes
 11 obstructed.

12 14. Defendants were keenly aware of these risks for as long as they sold the
 13 Products. Even before the product was introduced to the market in 2010, the American
 14 Academy of Pediatrics ("AAP") and major consumer groups repeatedly issued
 15 warnings about the serious dangers of inclined products marketed and sold for infant
 16 sleep, like the Products at issue.

17 15. Further, since 2012, at least five deaths involving infants 1 to 3 months of
 18 age who used the Products for sleep have been reported.⁵

19 16. Despite this, Defendants ignored these documented safety concerns and
 20 intentionally and knowingly marketed and sold the Products to consumers nationwide
 21 as a swing suitable for infant sleep.

22 17. Finally, on October 10, 2024, after repeated warnings from experts and
 23 the death of five infants, Defendants were forced to recall approximately 2.1 million

25 ⁵ *Fisher-Price Recalls More than 2 Million Snuga Infant Swings Due to Suffocation*
 26 *Hazard After 5 Deaths Reported*, CPSC.gov,
 27 [https://www.cpsc.gov/Recalls/2025/Fisher-Price-Recalls-More-than-2-Million-](https://www.cpsc.gov/Recalls/2025/Fisher-Price-Recalls-More-than-2-Million-Snuga-Infant-Swings-Due-to-Suffocation-Hazard-After-5-Deaths-Reported)
 28 [Snuga-Infant-Swings-Due-to-Suffocation-Hazard-After-5-Deaths-Reported](https://www.cpsc.gov/Recalls/2025/Fisher-Price-Recalls-More-than-2-Million-Snuga-Infant-Swings-Due-to-Suffocation-Hazard-After-5-Deaths-Reported) (accessed November 13, 2024).

1 individual Products in the United States, Australia, Canada, and Mexico and cease
 2 selling the product (“Recall”).⁶

3 18. The Recall notice (“Recall Notice”) confirms the existence of the
 4 dangerous Defect (emphasis added):

5 **Hazard:** The swing should **never be used for sleep** ... If the
 6 product is used for sleep ... the headrest and body support
 7 insert on the seat pad can **increase the risk of suffocation.**⁷

8 19. The Recall Notice further confirms the fact that the Products are
 9 completely unsafe for infant sleep (emphasis added):

10 **...never use these products for sleep...even after the**
 11 **headrest and the body support insert have been removed.**
 12 Parents and caregivers should never use any inclined seated
 13 products, such as swings, gliders, soothers, and rockers, for
 14 infant sleep and should not leave infants in these products
 15 unsupervised, unrestrained, or with bedding material due to
 16 the risk of suffocation.⁸

17 20. The Recall Notice advises consumers to “immediately remove both the
 18 headrest (by cutting the tether) and the body support insert from the seat pad before
 19 continuing to use the swing for awake-time activities.”⁹ Thus, Defendants place the
 20 purported safety remedy in the hands of consumers.

21 21. Defendants offer purchasers a partial refund of \$25, although the original
 22 price averaged around \$160.00 for most consumers. More specifically, the terms of the
 23 Recall Notice are set forth on Defendants’ websites, as follows:

24 You will need to remove the headrest and body support insert
 25 (if included) from the seat pad. Follow the instructions [here](#) or
 26 watch [this brief video](#) for information about how to remove

27 ⁶ *Id.*

28 ⁷ *Id.*

29 ⁸ *Id.*

30 ⁹ *Id.*

1 and properly destroy the headrest and body support insert (if
2 included) from your swing.

3 Upload a digital photo of your headrest and body support
4 insert (if included) with your unique case number and the word
5 “RECALL” handwritten in permanent dark-colored marker
6 directly onto the back of each of the cut pieces of the headrest
and body support insert (if included).

7 Photos that have been digitally altered or do not have your
8 unique case number written on the headrest and body support
insert (if included) will not be accepted.
9

10 22. Purchasers who qualify cannot redeem their partial refund until they
11 “remove the headrest and body support insert” and “properly destroy” them according
12 to the Defendants’ instructions, take a photo of the headrest and body support insert
13 with their case number and “RECALL” written on the back of the cut pieces, and
14 upload those photos with the online recall submission form, which also must be
15 completed, found on Defendants’ website.¹⁰ These modifications to the Product
16 significantly diminish (if not eliminate) its value. Moreover, they burden consumers
17 who are already living busy lives caring for their children and are neither trained nor
18 experienced in designing infant products, unlike Defendants.

19 23. Consumers like Plaintiff O’Rourke, who own more than one swing—a
20 common occurrence—cannot seek a refund through the website and must take
21 additional steps to contact Fisher-Price for additional service.

22 24. The Recall Notice is inadequate for at least two reasons. First, the
23 Defendants failed to recall the entire Product and instead only advised consumers to
24 remove certain portions of it. Accordingly, the Recall Notice fails to prevent the risks
25 _____
26

27 ¹⁰ *Fisher-Price Snuga Infant Swings*, Mattel.com,
<https://consumersupport.mattel.com/mattelsupport/s/recall?recallnumber=Swings>
28 (Last accessed November 13, 2024).

1 associated with infant sleep presented by the dangerously defective Product, contrary
 2 to Defendants' misrepresentations and omissions related to safety. By failing to recall
 3 the entire Product, Defendants allow and encourage consumers to continue to use a
 4 product that has already led to multiple infant deaths. Second, the Recall Notice is
 5 wholly ineffective in providing consumers an adequate monetary remedy for
 6 purchasing the dangerously defective and misrepresented Products. Consumers paid an
 7 average retail price of \$160 for the Products, but Defendants have provided consumers
 8 with a \$25 reimbursement, representing a mere fraction of the purchase price.

9 25. The very same day Defendants issued the Recall Notice, the CPSC issued
 10 the statement, "Commissioner Trumka Warns That Fisher-Price's Snuga Recall Notice
 11 Is Not Good Enough to Keep Babies Safe; Multiple Babies Dead."¹¹ CPSC
 12 Commissioner Trumka explained that Defendants' Recall Notice is inadequate as
 13 follows (emphasis added):

14 I absolutely agree that Fisher-Price Snuga Swings need to be
 15 recalled—they are tied to multiple infant sleep deaths.
 16 **I believe that the flawed recall that Fisher-Price
 17 is announcing today is doomed to fail and will keep many
 babies in harm's way.**

18 26. Commissioner Trumka further states that he fears "this dangerous
 19 approach will keep babies at risk of death just to save Fisher-Price money—**a horrible
 20 example of putting profit over people.**"¹²

21 27. Consumer Reports released an article on the same day, October 10, 2024,
 22 stating, "CR's safety experts welcome the recall because it's now illegal for anyone to

23
 24 ¹¹ *Commissioner Trumka Warns That Fisher-Price's Snuga Recall Is Not Good Enough
 25 to Keep Babies Safe; Multiple Babies Dead*, CPSC.gov, [https://www.cpsc.gov/About-CPSC/Commissioner/Richard-Trumka/Statement/Commissioner-Trumka-Warns-That-Fisher-Price%20%99s-Snuga-Recall-Is-Not-Good-Enough-to-Keep-Babies-Safe-Multiple-Babies-Dead](https://www.cpsc.gov/About-

 26 CPSC/Commissioner/Richard-Trumka/Statement/Commissioner-Trumka-Warns-

 27 That-Fisher-Price%20%99s-Snuga-Recall-Is-Not-Good-Enough-to-Keep-

 Babies-Safe-Multiple-Babies-Dead) (Last accessed November 13, 2024).

28 ¹² *Id.*

1 sell any Snuga Swing listed in today's announcement. But they also say the recall
 2 doesn't go far enough to help families protect their children and ensure that consumers
 3 are made whole for spending money on a product that turned out to be hazardous.”¹³

4 28. The existence of the Defect is a material fact that reasonable consumers,
 5 including Plaintiffs and Class Members, would have considered when deciding
 6 whether to purchase the Products. Before purchasing the Products, they did not know
 7 that the Products had the Defect and that, contrary to Defendants' misrepresentations
 8 and omissions related to Product safety, using the Products for their intended and
 9 foreseeable purpose would place their infant children in unreasonably dangerous
 10 sleeping positions and compromise their safety.

11 29. According to Defendants, since at least October 2010, they have sold
 12 approximately 2.1 million Products to consumers who purchased the Products in
 13 reliance on Defendants' misrepresentations and omissions as alleged herein, and which
 14 became part of the basis of their bargain with Defendants.¹⁴

15 30. Prior to the Recall, the Products were sold in brick-and-mortar stores such
 16 as Toys R Us, Walmart, Sams Club, and Target, as well as major online authorized
 17 retailers' websites, including Amazon.com, Walmart.com, and Target.com
 18 nationwide.¹⁵ The base retail pricing of the Products was approximately \$160.¹⁶

19 31. Due to Defendants' misrepresentations and omissions regarding the safety
 20 of the Products, Plaintiffs and all reasonable consumers expected the Products to be
 21

22 ¹³ Over 2 Million Fisher-Price Snuga Baby Swings Recalled for Suffocation Risk,
 23 ConsumerReports.com, <https://www.consumerreports.org/babies-kids/baby-product-recalls/fisher-price-snuga-baby-swings-recalled-for-suffocation-risk-a2341467743/?msockid=19f2d5f7732f63fe1135c60c725462ca> (Last accessed
 24 November 13, 2024).

25 ¹⁴ Fisher-Price Recalls More than 2 Million Snuga Infant Swings Due to Suffocation
 26 Hazard After 5 Deaths Reported, *supra* n. 4.

27 ¹⁵ *Id.*

28 ¹⁶ *Id.*

1 suitable for infant sleep and paid a premium for that important quality. Defendants can
2 charge this premium price for the Products due to the representations and omissions
3 regarding safety, as Defendants know that safety and suitability for infant use, which
4 naturally (and foreseeably) includes sleep, is paramount for consumers.

5 32. Given the nature of the Products, studies have shown that consumers are
6 willing to pay more for a baby product that is marketed as safe. For example, the latest
7 market report conducted by Transparency Market Research, a business consulting firm,
8 revealed that “[m]anufacturers of baby care products are focusing more on quality and
9 innovation as parents are willing to pay more for high quality and safe baby care
10 products. Furthermore, aggressive marketing strategies of companies through online
11 and offline advertising, and various promotional activities are substantially driving the
12 global baby care products market.”¹⁷

13 33. Defendants’ false and misleading marketing of these dangerous Products,
14 and knowing failure to disclose the grave risks of allowing infants to sleep in the
15 Products, allowed Defendants to reap vast profits at the expense of consumers who
16 erroneously believed they were giving their babies a safe place to be soothed to sleep.

17 34. Had Plaintiffs and Class Members known about the Defect and the
18 associated fatal risks of unsafe sleeping conditions caused by the Defect, they would
19 not have purchased the Product or would have paid significantly less for it.

20 35. Plaintiffs, on behalf of themselves and Class Members, seek damages and
21 all other relief available under law and equity from Defendants, including punitive
22 damages. Plaintiffs also seek class-wide injunctive relief, including: (i) a state-of-the-
23 art notice program for the wide dissemination of a factually accurate recall notice for
24 the Products; (ii) the implementation of a corrective advertising campaign to alert

25
26 ¹⁷ Baby Care Products Market Outlook 2031, Transparency Market Research, Inc.,
27 <https://www.transparencymarketresearch.com/baby-care-products-market.html> (Last
28 accessed November 13, 2024).

1 caregivers to the dangers of inclined swings marketed for infant sleep, including the
2 Products, and educating them about the standards for safe infant sleep; and/or (iii) an
3 offer to replace the Products with a reasonable and safe infant product.

4 **PARTIES**

5 **PLAINTIFFS**

6 36. At all relevant times, Plaintiff Valerie Gates has resided in Fulton, New
7 York and is a citizen of New York. Plaintiff Gates purchased a Sweet Snugapuppy™
8 Swing in or around late 2021 from Target for approximately \$160.

9 37. Prior to her purchase, Ms. Gates read and relied upon Defendants'
10 advertising and marketing materials, including the misrepresentations and omissions
11 related to safety alleged herein, which she understood to mean the Product was a safe
12 and suitable environment for infants to sleep in. Ms. Gates would not have purchased
13 or used the Sweet Snugapuppy™ Swing had she known that it was unsafe for its
14 intended, marketed and/or reasonably foreseeable use; that it was dangerous; and that
15 it exposed her baby to the risk of injury and death.

16 38. Ms. Gates was forced to completely discontinue her use of the Product
17 when the Defect was discovered due to the ongoing safety risk of placing her infant in
18 an unsafe sleeping environment.

19 39. To the best of her knowledge, Ms. Gates did not receive a Recall Notice
20 from Defendants. However, if she had, she would not have been made whole by the
21 \$25.00 partial refund because it is an inadequate remedy. The purported solution to the
22 defective Products is insufficient and has diminished if not entirely eliminated the
23 valued of the Products

24 40. At all relevant times, Plaintiff Phlecia McCrea has resided in Hartsville,
25 South Carolina and is a citizen of South Carolina. Plaintiff McCrea purchased a
26 Snugabear™ Cradle Swing in or around 2021 from Wal-Mart for approximately
27 \$150.00.

1 41. Prior to her purchase, Ms. McCrea read and relied upon Defendants'
2 advertising and marketing materials, including the misrepresentations and omissions
3 related to Product safety alleged herein, which she understood to mean the Product was
4 a safe and suitable environment for infants to sleep in. Ms. McCrea would not have
5 purchased or used the Snugabear™ Cradle Swing had she known that it was unsafe for
6 its intended, marketed and/or reasonably foreseeable use; that it was dangerous; and
7 that it exposed her baby to the risk of injury and death.

8 42. Ms. McCrea was forced to completely discontinue her use of the Product
9 shortly after her purchase when the Defect was discovered due to the ongoing safety
10 risk of placing her infant in an unsafe sleeping environment.

11 43. To the best of her knowledge, Ms. McCrea did not receive a Recall Notice
12 from Defendants. However, if she had, she would not have been made whole by the
13 \$25.00 partial refund because it is an inadequate remedy. The purported solution to the
14 defective Products is insufficient and has diminished the valued of the Products.

15 44. At all relevant times, Plaintiff O'Rourke has resided in Charleston, Illinois
16 and is a citizen of Illinois. In 2023, Plaintiff O'Rourke purchased three of the Products
17 for her triplets, including the Sweet Snugamonkey Swing and Peek-a-boo Fox Swing,
18 from Wal-Mart.

19 45. Prior to her purchase, Ms. O'Rourke read and relied upon Defendants'
20 advertising and marketing materials, including the misrepresentations and omissions
21 regarding product safety alleged herein, which she understood to mean the Product was
22 a safe and suitable environment for infants to sleep in. Ms. O'Rourke would not have
23 purchased or used the Sweet Snugamonkey Swing had she known that it was unsafe
24 for its intended, marketed and/or reasonably foreseeable use; that it was dangerous; and
25 that it exposed her baby to the risk of injury and death.

46. Ms. O'Rourke was forced to completely discontinue her use of the Product shortly after her purchase when the Defect was discovered due to the ongoing safety risk of placing her infant in an unsafe sleeping environment.

47. To the best of her knowledge, Ms. O'Rourke did not receive a Recall Notice from Defendants. However, if she had, she would not have been made whole by the \$25.00 partial refund because it is an inadequate remedy. The purported solution to the defective Products is insufficient and has diminished, if not entirely eliminated, the value of the Products.

DEFENDANTS

Fisher-Price, Inc.

48. Defendant Fisher-Price is a Delaware corporation with its principal place of business in East Aurora, Erie County, New York. Fisher-Price designs, manufactures, distributes, markets, advertises, labels, and sells products for the care of infants and preschool children to consumers throughout the United States.

49. Fisher-Price is a wholly-owned subsidiary of Mattel. The website on which Defendants advertised their Snuga Swings includes Mattel's name: <https://fisher-price.mattel.com>.

Mattel, Inc.

50. Defendant Mattel is a Delaware corporation with its principal place of business in El Segundo, California. Mattel is the world's second-largest toy maker and the parent company of Fisher-Price. On its annual filings with the Securities Exchange Commission, Mattel references Fisher-Price as a "brand" in "Mattel's portfolio of iconic brands."¹⁸

¹⁸ See, e.g., Mattel, Inc., 2018 10-K, at 4 (February 21, 2023), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000063276/a8e997d5-5ae2-4b5b-be6c-54db4ce61f91.pdf> (last accessed November 13, 2024).

51. Until January 2024, Mattel directly and/or through Fisher-Price designed, manufactured, distributed, marketed, advertised, labeled, and sold its line of Snuga Swings, and the Products, in all 50 states.

52. Mattel shares overall responsibility for the safety of Fisher-Price products, including the Snuga Swings. All recall notices and safety alerts for both Fisher-Price and Mattel products, as well as customer service for both Fisher-Price and Mattel products, are found on the Mattel website.

53. Mattel wholly owns Fisher-Price and includes its results on its SEC filings. On Mattel's financial filings, it describes Fisher-Price as a "brand," part of the "Infant, Toddler, and Preschool Segment" represented in Mattel's gross sales.¹⁹

54. Mattel, at all relevant times, had senior executives with control over, involvement in and oversight of Fisher-Price, with titles such as “Executive Vice President – Fisher-Price Global Brands,” and “Executive Vice President - Fisher-Price Global Brand Marketing.”

55. Moreover, the instruction manuals for the Products were posted on Mattel's website.²⁰

56. Mattel bears responsibility for failing to recall the Products in a timely manner and for the inadequate recall. Mattel was directly involved in all recalls of Fisher-Price products.

57. Mattel's corporate headquarters is in California, and California is the nerve center of Defendants' actions (and inactions) subject to this litigation. Mattel is a citizen of California.

JURISDICTION AND VENUE

58. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 of the Class Action Fairness Act because: (1) there are 100 or more

19 *Id.*

²⁰ m.service.mattel.com/us/Technical/productDetail?prodno=CMR45&siteid=27

1 putative Class Members; (2) the aggregate amount in controversy exceeds
2 \$5,000,000.00, exclusive of interest and costs; and (3) there is diversity because
3 Plaintiffs and at least one Defendant are citizens of different states.

4 59. This Court has supplemental jurisdiction over Plaintiffs' state law claims
5 pursuant to 28 U.S.C. § 1337.

6 60. This Court has personal jurisdiction over Defendants because
7 Defendants do substantial business in this State and within this District, receive
8 substantial compensation and profits from the marketing, distribution, and sale of
9 products in this District, and have engaged in the unlawful practices described in this
10 Complaint within this District.

11 61. In accordance with 28 U.S.C. § 1331, venue is proper in this District
12 because a substantial part of the conduct giving rise to Plaintiffs' claims occurred in
13 this District, Defendants regularly transact business in this District, and Defendants
14 have intentionally availed themselves of the laws and markets within this District.
15 Also, Defendant Mattel is headquartered here, making this venue the nerve center of
16 this litigation.

17 **COMMON FACTUAL ALLEGATIONS**

18 ***A. Defendants' Deceptive and Misleading Safety Representations and Omissions***

19 62. Defendants regularly make numerous misrepresentations and omissions
20 regarding safety, including promises about Defendants' Products' safety and suitability
21 for infant sleep, directly to consumers through various channels like their websites,
22 retail websites, and YouTube Channel, among other avenues.

23 63. These representations can even be included names of the Products
24 themselves, such as the "Cradle 'n Swing," which communicates to reasonable
25 consumers that the Products may be used not just as a swing or a seat but as a *cradle*,
26 leading reasonable consumers, including Plaintiffs, to reasonably conclude that the
27 Products are suitable for infant sleep.

64. Further, Defendants' misrepresentations and omissions regarding safety included clear visual representations of infants sleeping in the Products on its authorized retailer's websites, such as Amazon.com, as demonstrated below:



* * *

65. Even more, while Defendants could have issued a warning in the user manual cautioning against using the Products for infant sleep at any time, they instead caution only against using the Products for *prolonged* periods of sleep.²¹ This limited warning further demonstrates that Defendants knew and expected that consumers would foreseeably use the Product for infant sleep, despite Defendants' knowledge of the attendant risks of such use.

²¹ See, e.g., Fisher Price DRG43 User Manual located at: <https://m.media-amazon.com/images/I/A1Om1C6kM1L.pdf> (Last accessed November 13, 2024).

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1 66. Defendants know that safety is the chief concern of parents and caregivers,
2 which is why Defendants' misrepresentations and omissions regarding safety are
3 intentionally designed to deceive reasonable consumers to pay a safety premium for
4 the Products.

5 67. As described below, for over 90 years, Fisher-Price has garnered
6 consumers' trust by marketing its products as good quality baby products, which are,
7 above all, *safe*. Fisher-Price states that it is the "#1 infant and preschool company in
8 the world" and "the only kid brand committed to all the years between 0 and 5."²²

9 68. Fisher Price consistently misleads consumers of Products by making
10 safety a central component of its brand image.

11 69. For example, up until at least July 2019, Defendant Fisher-Price had a
12 webpage dedicated to safety.²³ This page, titled "A Safety Story," states:

13 **It All Starts With Safety**

14 Squeals of delight, sighs of contentment, giggles of joy . . .
15 those are some of the reactions we hope for from families
16 using our babygear and toys. There's a less visible one, too:
17 peace of mind. "Parents have trusted us for more than 80 years
18 to provide safe products for their children, but we know we
19 must still earn their trust every day," says Kitty Pilarz, Vice
20 President of Product Safety & Regulatory Compliance at
21 Fisher-Price. 'So, right from the start of a design concept, we
22 work to make sure our products are as safe as they can be.'

23 70. This is false because the Products are not "as safe as they can be," and
24 instead are dangerous for sleep, the purpose for which they are advertised.

25
26 ²² <https://corporate.mattel.com/brand-portfolio/fisher-price> (Last accessed November
27 13, 2024).

28 ²³[https://web.archive.org/web/20190729085651/https://www.fisher-](https://web.archive.org/web/20190729085651/https://www.fisher-price.com/en_US/ourstory/safety/index.html)
https://www.fisher-price.com/en_US/ourstory/safety/index.html (Last accessed November 13, 2024).

1 71. Today, Defendant Fisher-Price has a similar webpage dedicated to safety
2 that employs analogous messages about its brand’s “commitment to safety” to market
3 its products to consumers and grow its wealth without regard for the truth:²⁴

4 **Our Commitment to Safety**

5 Fisher-Price is committed to building relationships with
6 children and earning the trust of their parents and caretakers.
7 Since our founding, safety has been our highest priority. For
8 more than ninety years, we have maintained an unrelenting
9 focus on product safety, quality, and compliance. We are
10 proud that families and children choose Fisher-Price again and
11 again to make childhood more joyful and support parents
12 through the early months and years of their babies’ lives.

13 72. The overarching message on Defendant Mattel’s website is also safety. As
14 shown below, the website states that the most important part of creating its products is
15 ensuring they are safe and that its internal product safety procedures are designed to
16 meet or exceed applicable regulations and laws.²⁵

17 **Product Quality and Safety**

18 Product quality and safety are key to the bedrock of trust we
19 establish with millions of families who buy and play with our
20 products every day. The development and construction of
21 new products involves numerous disciplines and multiple
22 areas of expertise devoted to ensuring the quality and safety
23 of our products before they go to market, as well as ensuring
24 they meet or exceed all applicable standards.

25 73. Parents’ trust is essential for Defendants’ success. Defendants advertise
26 their commitment to safety by ensuring their products comply with all safety standards.

27 ²⁴ *Safe Start*, Mattel.com, <https://shop.mattel.com/pages/safe-start> (Last accessed
28 November 13, 2024).

²⁵ *Id.*

1 74. Specifically, in 2019 and in response to the recall of the Fisher-Price
2 Rock-n-Play Sleepers, Chuck Scothon, General Manager of Fisher-Price stated, “we
3 want parents around the world to know that safety will always be a cornerstone of our
4 mission, that we are committed to these values, and will continue to prioritize the
5 health, safety and well-being of the infants and preschoolers who utilize our
6 products.”²⁶

7 75. As a result of Defendants’ decades-long marketing scheme, including the
8 misrepresentations and omissions regarding safety alleged herein, consumers
9 recognize the Fisher-Price and Mattel brands as reliable sources for safe infant
10 products. Consequently, these consumers reasonably rely on Defendants to produce
11 *safe*, reliable infant products.

12 ***B. Defendants Knew Their Products Could Not Conform to Safe Sleeping
13 Requirements.***

14 76. Defendants are keenly aware of the fact that safe sleep is a top priority for
15 parents and acknowledge explicitly that infants should sleep on their backs on a flat
16 and firm sleeping surface in the Recall²⁷:

17 CPSC continues to urge consumers to place infants on their
18 backs for sleep. The best place for an infant to sleep is on a
19 firm, flat surface in a crib, bassinet, or play yard, with nothing
20 but a fitted sheet. Infants who fall asleep in an inclined or
21 upright position should be moved to a safe sleep environment
22 with a firm, flat surface such as a crib, bassinet, or play yard.
23 In 2022, Congress enacted the Safe Sleep for Babies Act,
24 under which inclined sleepers for infants are banned hazardous
25 products.

26 ²⁶ *Fisher-Price Rock ‘n Play sleepers recalled as officials confirm over 30 infant deaths*, CNN.com, <https://www.cnn.com/2019/04/12/us/fisher-price-rock-n-play-sleeper-recall/index.html> (Last accessed November 13, 2024).

27 ²⁷ *Fisher-Price Recalls More than 2 Million Snuga Infant Swings Due to Suffocation Hazard After 5 Deaths Reported*, *supra* note 4.

1 77. Contrary to Defendants' promises to consumers that the Products are a
2 safe sleep environment for infants, the Defect in the Products renders them completely
3 unsuitable for infant sleep at all.

4 78. Per the recommendation of the CPSC, AAP, NICHD, and the U.S.
5 Surgeon General, infants should be put to sleep on their backs instead of their stomachs
6 or sides. The AAP, CPSC, NICHD and U.S. Surgeon General have made these
7 recommendations because studies show that the risk of Sudden Infant Death Syndrome
8 ("SIDS") increases when infants sleep facing downward in a prone position.²⁸

9 79. In addition to placing babies on their backs to sleep, the CPSC and AAP
10 recommend that infant sleep products conform to the Firm/Flat Standard so that infants
11 can effectively remain on their backs and not roll to their sides or fronts until
12 developmentally appropriate.²⁹

13 80. Like the CPSC and AAP, NICHD also recommends that parents and
14 caregivers can "reduce [their] baby's risk for Sudden Infant Death Syndrome (SIDS)
15 and other sleep-related deaths, such as from accidental suffocation" by using a "firm,
16 flat, and level" sleep surface.³⁰

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²⁸ Mitchell EA, et al. *Changing Infants' Sleep Position Increases Risk of Sudden Infant Death Syndrome. New Zealand Cot Death Study*. Arch. Pediatr. Adolesc. Med., 153(11):1136-41. (1999), <https://pubmed.ncbi.nlm.nih.gov/10555714/> (Last accessed November 13, 2024).

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²⁹ See *CPSC Approves Rules Implementing Bans on Inclined Sleepers for Infants and Crib Bumpers Rules Aim to Save Lives and Result in a Safer Marketplace for Parents and Babies*, (August 7, 2023) <https://www.cpsc.gov/Newsroom/News-Releases/2023/CPSC-Approves-Rules-Implementing-Bans-on-Inclined-Sleepers-for-Infants-and-Crib-Bumpers> (Last accessed November 13, 2024).

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1 81. Defendants knew or should have known of the risks of designing,
2 manufacturing, marketing, distributing and selling the Products using the
3 misrepresentations and omissions regarding safety when the Products suffered from
4 the Defect, which does not provide a firm, flat, level sleeping surface. The Products as
5 marketed and sold by Defendants could not and did not meet safe sleeping standards.

6 82. Nonetheless, Defendants failed to remedy the Defect or make any effort
7 to redesign the Products to conform to their representations and omissions regarding
8 safety.

9 83. Moreover, Defendants' Recall Notice fails to address the risks presented
10 by the defective Products and, instead, continues to put infant children at risk of serious
11 injury or death. Defendants failed to disclose the Defect to Plaintiffs and Class
12 Members at the time of purchase or thereafter, and despite admitting to the presence of
13 the Defect in the Recall, Defendants continue to represent that the Products can and
14 should be used by its consumers.

15 84. The Products are Defective in that they are designed with a sleeping
16 surface that is at a head-to-toe angle or incline. The Defect results in the Products'
17 complete and utter failure to provide an appropriate level or flat sleeping surface, which
18 would allow a baby to sleep safely on their back.

19 85. Thus, the defective nature of the Products significantly increases the risk
20 that the infant's head will slide into a dangerous position, tilt to constrict the windpipe,
21 and/or cause the infant's face to become pressed against the padded fabric in the sleeper
22 and block airflow, all of which the infant may be unable to correct. This increases the
23 risk of death by asphyxiation and makes following requisite safe sleep precautions
24 impossible.

25 86. Just like the banned Fisher-Price Rock'n'Play Sleepers (designed,
26 manufactured, and sold by the same Defendants in this case) the design of the Products

1 has the ability to make infants fall into a deeper sleep than normal sleep, which renders
2 them less able to wake up if and when their airflow becomes obstructed.

3 87. Thus, the Defect renders every Product unreasonably dangerous and
4 unsuitable for infant sleep at the point of purchase.

5 88. The Defect is latent such that no reasonable customer would know, or be
6 able to discover through inspection, that the Product's support structure is defective
7 and presents a risk of danger to children at the time the Product is purchased. However,
8 Defendants knew or should have known of the Defect before it distributed the Products
9 into the consumer marketplace.

10 89. Safer alternative designs, including infant sleeping products with a flat
11 and firm sleeping surface, were available to Defendants but not utilized. However,
12 despite the availability and feasibility of these other reasonable alternatives,
13 Defendants intentionally chose to design the Products with an inclined sleeping surface
14 so that they could garner more market share at the expense of consumers.

15 90. Plaintiffs and the Class Members have a reasonable expectation that their
16 Products will be safe for infants as advertised.

17 91. Further, reasonable consumers expect the Products to be safe and suitable
18 for infant sleep. However, due to the Defect, the Products fail to serve that purpose.
19 Instead, they create an unreasonably dangerous inclined sleeping environment for the
20 infant children of consumers who paid for and expected to receive a safe Product.

21 ***C. Defendants' Express and Implied Warranties***

22 92. Defendants, Mattel and Fisher-Price, individually or together, expressly
23 and impliedly warrant, via user manuals³¹, advertisements, pamphlets, brochures,
24 circulars, samples, and/or models, that the Products are fit for the ordinary purpose for
25 which they are sold.

27 31 Fisher-Price, Model No. DRG43 User Manual, [https://m.media-
28 amazon.com/images/I/A1Qm1C6kM1L.pdf](https://m.media-amazon.com/images/I/A1Qm1C6kM1L.pdf) (accessed November 13, 2024).

1 93. However, as described herein, the Products contain a uniform Defect prior
2 to and at the time of purchase, causing them to commonly and consistently fail in their
3 primary purpose.

4 94. Prior to purchasing the Products, Plaintiffs and other Class Members did
5 not know that the Products had the Defect that, contrary to Defendants' misrepresentations and omissions related to safety, would place their infants in an
6 unreasonably dangerous sleeping environment. Further, consumers, including
7 Plaintiffs, had no reason to know that the misrepresentations and omissions regarding
8 safety were deceptive or misleading.

9 95. Defendants clearly intended their warranties to apply directly to these
10 consumers, the parents and caregivers who depend on the Defendants to provide
11 reliable infant sleep products.

12 96. Defendants' manifest intent that their warranties apply to Plaintiffs and
13 Class Members as third-party beneficiaries is evident from the statements in their
14 product literature, which begins on the date of the consumers' purchases and excludes
15 commercial, non-residential use.

16 97. The express and implied warranties relating to the Product collectively
17 and individually are the result of surprise and oppression and are so one-sided and
18 overly harsh such that they are both procedurally and substantively unconscionable.

19 98. In addition, the warranty fails of its essential purpose in that (1) the Defect
20 exists at the time the Product leaves the manufacturing facility and (2) Defendants fail
21 to disclose its knowledge of the Defect when contacted by customers about the
22 Product's failures.

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CLASS ACTION COMPLAINT

1 **D. The Belated and Inadequate Recall Notice**

2 99. On October 10, 2024, after at least five infants died in the Product,
3 Defendants issued the Recall Notice for 2.1 million Products because the Products are
4 unreasonably dangerous for their intended use as an infant sleep product.³²

5 100. The Recall Notice applies to all 21 models and variations of the Product
6 in the United States, Australia, Canada, and Mexico.³³ All 21 models are substantially
7 similar in their forward-facing representations to consumers and are uniform in that
8 they contain the same Defect, as evidenced by their inclusion in the Recall Notice.

9 101. The Recall Notice announcement tilted, “Fisher-Price Recalls More than
10 2 Million Snuga Infant Swings Due to Suffocation Hazard After 5 Deaths Reported,”³⁴
11 clearly confirms the existence of the dangerous Defect and that the Product is
12 completely unsafe for infant sleep.³⁵

13 102. Despite the contradiction between the Defendants’ misrepresentations and
14 omissions regarding safety and the Recall, Defendants, instead of recalling the Products
15 in their entirety and advising consumers not to use them any longer, intentionally chose
16 the more profitable route and simply advised consumers to “immediately remove both
17 the headrest (by cutting the tether) and the body support insert from the seat pad before
18 continuing to use the swing for awake-time activities.”³⁶

19 103. The Recall’s effect of simply removing the two pieces of padding, the
20 headrest and body support, from the Product completely fails to mitigate the safety
21 risks presented by the Defect and does nothing to keep infant children safe as promised
22 by Defendants.

23 _____
24 ³² *Fisher-Price Recalls More than 2 Million Snuga Infant Swings Due to Suffocation Hazard After 5 Deaths Reported*, *supra* note 4.

25 ³³ *Id.*

26 ³⁴ *Id.*

27 ³⁵ *Id.*

28 ³⁶ *Id.*

104. Because Defendants failed to issue an adequate recall, Commissioner Trumka has gone above and beyond and recommends that consumers “throw this product away; do not keep it in your homes because even after the so-called ‘repair’ this product will still be unsafe for infant sleep” because he is certain that “if these products remain in homes, many consumers will still use these products for sleep because they have received conflicting instructions over time.”

105. In addition to Commissioner Trumka, CPSC Chair Alexander Hoehn-Saric and Commissioner Mary T. Boyle also issued a statement the same day as the Recall, “Joint Statement of Chair Alexander Hoehn-Saric and Commissioner Mary T. Boyle Regarding the Recall of more than Two Million Snuga Swings” because they felt it did not go far enough to protect consumers.³⁷

106. As noted above, Consumer Reports has also participated in the public outcry regarding the inadequacies of the Recall Notice, claiming that “the recall doesn’t go far enough to help families protect their children and ensure that consumers are made whole for spending money on a product that turned out to be hazardous.”³⁸

107. In addition to the Recall's failure to remove the entire Product from the marketplace, consumers will not be compensated for all costs they incurred in connection with the Product.

³⁷ Joint Statement of Chair Alexander Hoehn-Saric and Commissioner Mary T. Boyle Regarding the Recall of more than Two Million Snuga Swings, CPSC.gov, <https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric-Mary-T-Boyle/Statement/Joint-Statement-of-Chair-Alexander-Hoehn-Saric-and-Commissioner-Mary-T-Boyle-Regarding-the-Recall-of-more-than-Two-Million-Snuga-Swings> (Last accessed November 13, 2024).

³⁸ Over 2 Million Fisher-Price Snuga Baby Swings Recalled for Suffocation Risk, ConsumerReports.com, <https://www.consumerreports.org/babies-kids/baby-product-recalls/fisher-price-snuga-baby-swings-recalled-for-suffocation-risk-a2341467743/?msclkid=19f2d5f7732f63fe1135c60c725462ca> (Last accessed November 13, 2024).

CLASS ACTION COMPLAINT

1 108. Consumers paid approximately \$160 or more for each of the Products,
2 however, the Recall Notice only provides for reimbursement of a mere \$25. This small
3 amount is completely inadequate under the circumstances. It does not account for the
4 total cost of the Product, nor does it make up for the taxes (without a receipt), shipping,
5 handling and other charges paid when the original purchase of the product was made
6 and further, it does not include costs associated with stopping use of the Product after
7 the announcement of the Recall Notice such as replacing it with a different product that
8 is safe for infant sleep.

9 109. Thus, the Defendants' Recall Notice is ineffective in providing consumers
10 the proper monetary relief for their purchases of the dangerously defective and
11 misrepresented Products and does nothing to stop infants from dying in the Products.

12 110. Moreover, it is well known that product recalls generally have a low level
13 of participation when consumers are asked to deconstruct and physically destroy parts
14 of the Products, but to continue using them in this destructed form.

15 ***E. Defendants Actual or Constructive Knowledge of the Defect***

16 111. Defendants knew or should have known when they sold the Products to
17 the public that they suffered from the Defect, and that the Defect caused them to
18 function improperly during their expected useful life, created an unsafe and dangerous
19 sleeping environment for infants, and increased the potential for serious harm and/or
20 death to the infant children.

21 112. Defendants' knowledge of the Defect is established through their Recall,
22 which states that babies have been dying in the Products since at least 2012.³⁹

23 113. Despite its knowledge, upon information and belief, Defendants did not
24 remedy or eliminate the Defect in the Products or remove the Products from the stream

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26
27 ³⁹ Fisher-Price Recalls More than 2 Million Snuga Infant Swings Due to Suffocation
28 Hazard After 5 Deaths Reported, *supra* note 4.

1 of commerce. Instead, Defendants continued to unlawfully advertise the Products as
2 safe and to sell the unreasonably dangerous Products to consumers.

3 114. In conjunction with Defendants' vast experience with infant sleep
4 products, these facts and reports of infant death illustrate that Defendants knew or
5 should have known of the Defect and the resulting incapability of the Products to
6 conform to their misrepresentations and omissions regarding safety.

7 115. Defendants must disclose the Defect and to not conceal the Defect from
8 Plaintiffs and Class Members. Defendants' failure to disclose, or active concealment
9 of, the Defect places Plaintiffs and Class Members' infants at risk of serious injury
10 and/or death.

11 116. Defendants, even in light of the Recall, are currently still allowing the sale
12 of the defective Product.

13 117. Had Plaintiffs, Class Members, and the consuming public known that the
14 Product was defective, unsuitable for safe infant sleep, and risks their infant children's
15 lives, they would not have purchased it.

16 118. Defendants have wrongfully placed on Plaintiffs and Class Members the
17 burden, expense, and difficulty involved in discovering the Defect and determining that
18 the Products are unsafe and paying for the cost of damages caused by the Defect.

19 ***F. Injury to the Public-at-Large and Potential Future Harm***

20 119. By misrepresenting the Product as safe or suitable for infant sleep and by
21 failing to disclose that the Product contains a uniform Defect and exposes infants to the
22 risk of serious injury and death, Defendants continue to harm all Class Members and
23 consumers who may purchase the Product.

24 120. In addition, because Defendants continue to encourage consumers to use
25 the Product as described herein, Defendants' actions pose an ongoing risk to the public.

26 121. As such, a public injunction is necessary to enjoin Defendants' continued
27 harm of consumers and the public-at-large.

1 122. Similarly, should Defendants not be enjoined from their unlawful and
2 deceptive conduct, Plaintiffs and Class Members face the potential for irreparable
3 future harm, including purchasing the Product which is not safe or suitable for infant
4 sleep and instead contains a uniform Defect and exposes infants to the risk of serious
5 injury and death.

TOLLING AND ESTOPPEL OF STATUTE OF LIMITATIONS

7 123. Defendants have continuously marketed and sold the dangerous Products
8 to unsuspecting parents and caregivers of infants. They continuously represented that
9 the Product is safe and suitable for infant sleep.

10 124. By continuously repeating these false representations and failing to
11 disclose that the Product is not safe or suitable for infant sleep, contains a uniform
12 Defect, and exposes infants to risk of serious injury and death, Defendants engaged in
13 a continuing wrong sufficient to render inapplicable any statute of limitations that
14 Defendants might seek to apply.

15 125. As the creator and manufacturer of the Product, Defendants have had
16 actual knowledge since at least 2010 that the Product is defectively designed and
17 exposes infants to great risk of serious injury and death.

18 126. Defendants' knowledge of the Defect is evidenced by, amongst other
19 things, the Recall Notice and reports of infant death in the Product.

20 127. Thus, at all relevant times, Defendants indisputably possessed continuous
21 knowledge of the material dangers posed by the Product, and yet Defendants
22 knowingly continue to allow the sale of the Product. Plaintiffs' and other Class
23 Members' claims are not time barred.

24 128. Moreover, even after the Recall, there is no evidence that news of the
25 Recall Notice reached all owners of the Products.

26 129. Plaintiffs and other Class members could not have reasonably discovered
27 and could not have known of facts that would have caused a reasonable person to

1 suspect that Defendants knowingly failed to disclose material information within their
2 knowledge about a dangerous defect to consumers in the United States and elsewhere.
3 Therefore, no potentially relevant statute of limitations should apply.

4 130. Throughout the time period relevant to this action, Defendants concealed
5 from and failed to disclose to Plaintiffs and the other Class Members vital information
6 about the Defect described herein.

7 131. Defendants kept Plaintiffs and the other Class Members ignorant of vital
8 information essential to the pursuit of their claims. As a result, neither Plaintiffs nor
9 the other Class Members could have discovered the Defect, even upon reasonable
10 exercise of due diligence.

11 132. Further, Defendants create consumer confusion in their deficient Recall,
12 encouraging consumers to continue to use the dangerous Product.

13 133. Defendants had a duty to disclose to Plaintiffs and the Class Members the
14 true quality and nature of the Product, that the Product has a uniform dangerous Defect,
15 and that it poses safety concerns and is in fact dangerous.

16 134. This duty arose, among other things, from Defendants' explicit
17 representations that the Product was safe and suitable for infant sleep.

18 135. Throughout the Class Period, at all relevant times, Defendants have
19 known that the Product, which they designed, manufactured, selected materials for and
20 sold, contained the Defect resulting in premature failure in its essential purpose, and
21 posed serious safety risks to infants.

136. Defendants' actual knowledge of the serious safety risks created by the
use of the Product is evidenced by, among other things, Defendants' misrepresentations
and omissions regarding safety and the reports of five infant deaths in the Product since
2012.

137. Despite Defendants' knowledge of the Defect and serious safety issues
posed by the Product when used as intended, Defendants failed to disclose and

1 concealed this material information from Plaintiffs and other Class Members, even
2 though, at any point in time, they could have disclosed the Defect through an earlier
3 recall, individual correspondence, media release, or by other means.

4 138. Instead, Defendants continued to market the Product as suitable for its
5 intended purpose as a safe environment for soothing infants to sleep.

6 139. The purpose of Defendants' concealment of the dangers was to continue
7 to profit from the sale of their popular Product and to prevent Plaintiffs and other Class
8 Members from seeking redress.

9 140. Plaintiffs and the other Class Members justifiably relied on Defendants to
10 disclose the true nature of the Product they purchased and/or owned because that Defect
11 was not discoverable by Plaintiffs and the other Class Members through reasonable
12 efforts.

13 141. Any applicable statute of limitations has been tolled by Defendants' knowledge, active concealment, and denial of the facts alleged herein, which is ongoing. To this day, Defendants continue to insist the Product is safe when the body support insert is removed.

17 142. Plaintiffs and other Class Members could not have discovered through the
18 exercise of reasonable diligence that their Product was defective within the time-period
19 of any applicable statutes of limitation.

143. Among other things, neither Plaintiffs nor the other Class Members knew
or could have known that the Product contains the Defect.

22 144. There is no evidence that Plaintiffs were aware of the Product's dangerous
23 Defect and safety risks. Defendants have concealed and misrepresented the dangerous
24 Defect in the Product and the risks that were posed by that Defect.

25 145. Plaintiffs and other Class Members could not have reasonably discovered
26 and could not have known of facts that would have caused a reasonable person to

1 suspect that Defendants knowingly failed to disclose material information within their
2 knowledge about a dangerous Defect to consumers in the U.S. and elsewhere.

3 146. As such, no potentially relevant statute of limitations should be applied.

4 **CLASS ACTION ALLEGATIONS**

5 147. Plaintiffs bring this action individually and on behalf of all others
6 similarly situated, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3), on behalf
7 of themselves and the members of the following proposed nationwide class
8 (“**Nationwide Class**”):

9 **During the fullest period allowed by law, all persons who**
10 **purchased the Products in the United States for personal**
11 **use and not resale.**

12 148. Plaintiff Gates brings this action individually and as a representative of all
13 those similarly situated, pursuant to Fed. R. Civ. P. 23, on behalf of herself and the
14 members of the following proposed New York class (“**New York Subclass**”):

15 **During the fullest period allowed by law, all persons who**
16 **purchased the Products in the State of New York for**
17 **personal use and not for resale.**

18 149. Plaintiff O’Rourke brings this action individually and as a representative
19 of all those similarly situated, pursuant to Fed. R. Civ. P. 23, on behalf of herself and
20 the members of the following proposed Illinois class (“**Illinois Subclass**”):

21 **During the fullest period allowed by law, all persons who**
22 **purchased the Products in the State of Illinois for**
23 **personal use and not for resale**

24 150. Specifically excluded from these definitions are: (1) Defendants, any
25 entity in which Defendants have a controlling interest, and their legal representatives,
26 officers, directors, employees, assigns and successors; (2) the Judge to whom this case
27 is assigned and any member of the Judge’s staff or immediate family; and (3) Class
28

1 Counsel. Plaintiffs reserve the right to amend the Class and/or Subclass definitions as
2 necessary.

3 151. Plaintiffs seek only damages and equitable relief on behalf of themselves
4 and the putative Classes. Plaintiffs disclaim any intent or right to seek any recovery in
5 this action for personal injuries, wrongful death, or emotional distress suffered by
6 Plaintiffs and/or putative Class Members.

7 152. Plaintiffs reserve the right to modify the class definitions, if necessary, to
8 include additional products made by Defendants with the same Defect and/or other
9 products manufactured by Defendants with the common Defect but bearing different
10 brand names.

11 153. **Numerosity:** The Members of the Class and Subclasses are so numerous
12 that joinder of all members is impracticable. While the exact number of Class Members
13 is presently unknown, it likely consists of at least thousands of people throughout the
14 United States and the state(s) of Illinois, New York, and South Carolina as 2.1 million
15 Products were sold. The number of Class Members can be determined by sales
16 information and other records. Moreover, joinder of all potential Class Members is not
17 practicable given their numbers and geographic diversity. The Class is readily
18 identifiable from information and records in the possession of Defendants and its
19 authorized distributor and retailers.

20 154. **Typicality:** The claims of the representative Plaintiffs are typical in that
21 Plaintiffs, like all Class Members, purchased a Product that was manufactured,
22 marketed, advertised, distributed, and sold by Defendants. Plaintiffs, like all Class
23 Members, were damaged by Defendants' uniform misconduct in that, *inter alia*, they
24 have incurred or will continue to incur damage as a result of overpaying for the Product
25 that was manufactured with the Defect, which makes it unusable, inherently dangerous,
26 and not fit for its intended use, and which is subject to an inadequate recall.
27 Furthermore, the factual basis of Defendants' misconduct is common to all Class
28

1 Members because it engaged in systematic fraudulent behavior that was deliberate, as
2 well as negligent misconduct, and results in the same injury to all Class Members.
3 Plaintiffs are advancing the same claims and legal theories on behalf of themselves and
4 all members of the Classes they seek to represent.

5 155. **Commonality:** Common questions of law and fact exist as to all Members
6 of the Classes. These questions predominate over questions that may affect only
7 individual Class Members because Defendants have acted on grounds generally
8 applicable to the Classes. Such common legal or factual questions include, *inter alia*:

- 9 a. Whether the Products are defectively designed and/or manufactured;
- 10 b. Whether Defendants knew or should have known about the Defect in
11 their Products prior to distributing and selling them to Plaintiffs and Class
12 Members;
- 13 c. Whether Defendants concealed from and/or failed to disclose to Plaintiffs
14 and Class Members that the Products contained a uniform Defect;
- 15 d. Whether Defendants failed to adequately warn Plaintiffs and Class
16 Members that the Products contained the Defect, were not safe or suitable
17 for infant sleep, and placed infants at a significant risk of injury and/or
18 death;
- 19 e. Whether Defendants engaged in unfair, unconscionable, or deceptive
20 trade practices by selling and/or marketing the Products containing the
21 Defect;
- 22 f. Whether Defendants' claims about the Products being safe and suitable
23 for infant sleep including back sleep are reasonably likely to deceive;
- 24 g. Whether Defendants' claims about the Products being safe and suitable
25 for infant sleep including back sleep are material to reasonable
26 consumers;
- 27 h. Whether Defendants concealed from and/or failed to disclose to Plaintiffs

1 and Class Members that the Products are not safe and not suitable for
2 infant sleep;

3 i. Whether Defendants have violated consumer protection statutes;

4 j. Whether Defendants have been unjustly enriched;

5 k. Whether Defendants breached the implied and express warranties
6 relating to the Products;

7 l. Whether Plaintiffs and the members of the Class are entitled to damages,
8 including compensatory, exemplary, and statutory damages, and the
9 amount and nature of such damages; and

10 m. Whether Plaintiffs and the members of the Class are entitled to injunctive,
11 declaratory, or other equitable relief including enjoining Defendants from
12 selling and marketing the Products containing the Defect.

13 156. Defendants engaged in a common course of conduct giving rise to the
14 legal rights sought to be enforced by Plaintiffs, on behalf of themselves and other Class
15 Members. Similar or identical statutory violations, common law wrongs, business
16 practices, and injuries are involved. Individual questions, if there are any, pale by
17 comparison, in both quality and quantity, to the numerous common questions that
18 predominate in this action.

19 157. **Adequate Representation:** Plaintiffs will fairly and adequately protect
20 the interests of Class Members. They have no interests antagonistic to those of Class
21 Members. Plaintiffs retained attorneys experienced in the prosecution of class actions,
22 including consumer products, product defects, misrepresentation, mislabeling, and
23 class actions, and Plaintiffs intend to prosecute this action vigorously.

24 158. **Injunctive/Declaratory Relief:** The elements of Rule 23(b)(2) are met.
25 Defendants will continue to commit the unlawful practices alleged herein, and
26 Plaintiffs and Class Members will continue to be deceived by Defendants'
27 misrepresentations and omissions and unknowingly be exposed to the risk of serious

1 and life-threatening harm associated with the Product. Defendants have acted and
2 refused to act on grounds that apply generally to the Class, such that final injunctive
3 relief, public injunctive relief, and corresponding declaratory relief are appropriate
4 respecting the Class as a whole. Injunctive relief, and specifically public injunctive
5 relief, is necessary in this action.

6 159. Plaintiffs further seek injunctive and declaratory relief requiring
7 Defendants to cease their unfair, deceptive, and unlawful conduct, including a complete
8 recall of the entire product and full reimbursement for the full purchase price. Plaintiffs
9 also seek a declaration that the Product suffers from the Defect and that all warranties
10 cover the Defect, which existed at the time of sale of the Product to consumers, which
11 was known to Defendants and unknown to consumers.

12 160. Plaintiffs and Class Members have been harmed and will experience
13 irreparable future harm should Defendants' conduct not be enjoined because they will
14 continue to use the Product, which still contains the Defect even if the headrest and
15 body support are removed as instructed by the Recall.

16 161. **Predominance and Superiority:** A class action is superior to other
17 available methods for the fair and efficient adjudication of the controversy. Absent a
18 class action, Class Members would likely find the cost of litigating their claims
19 prohibitively high given the average price point of the Product and would therefore
20 have no effective remedy at law. Because of the relatively small size of Class Members'
21 individual claims, it is likely that few Class Members could afford to seek legal redress
22 for Defendants' misconduct. Absent a class action, Class Members will continue to
23 incur damages, and Defendants' misconduct will continue without remedy. Class
24 treatment of common questions of law and fact would also be a superior method to
25 multiple individual actions or piecemeal litigation in that class treatment will conserve
26 the resources of the courts and the litigants and will promote consistency and efficiency
27 of adjudication.

162. The claims presented in this case predominate over any questions of law or fact affecting individual Class Members

163. Plaintiffs knows of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

164. Defendants implemented uniform procedures relating to the Recall, which resulted in uniform damage to Plaintiffs and Class Members. As a result, Defendants have acted or refused to act on grounds generally applicable to each Class Member, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

CLAIMS FOR RELIEF

COUNT I

Violations of The Illinois Consumer Fraud and Deceptive Trade Practices Act, 815 ILCS §§ 505-1, et seq.

(Plaintiff O'Rourke Individually and on Behalf of the Illinois Subclass)

165. Plaintiff O'Rourke, individually and on behalf of the Illinois Subclass, brings this cause of action and hereby adopts and incorporates by reference the allegations contained in all preceding paragraphs as though fully set forth herein.

166. The conduct described herein constitutes unfair methods of competition or deceptive acts or practices in violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act (“ICFA”), 815 ILCS §§ 505-1, *et seq.*

167. Plaintiff and Illinois Subclass Members are “persons” within the context of 815 ILCS § 505-1(c).

168. Defendants are “persons” within the context of the ICFA, 815 ILCS § 505/1(c).

169. At all times relevant hereto, Defendants were engaged in trade or commerce as defined under the ICFA, 815 ILCS § 505/1(f).

170. Plaintiff O'Rourke and the Illinois Subclass members are “consumers” who purchased the Products for personal, family, or household use within the meaning of the ICFA, 815 ILCS § 505/1(e).

171. The ICFA prohibits engaging in “unfair or deceptive acts or practices ... in the conduct of any trade or commerce....” ICFA, 815 ILCS § 505/2.

172. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices, including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the Uniform Deceptive Trade Practices Act (“UDTPA”). 815 ILCS § 505/2.

173. Plaintiff O'Rourke and the other Illinois Subclass Members reasonably relied upon Defendants' misrepresentations and omissions alleged herein regarding the Products, specifically regarding the safety of the Products for infant sleep.

174. Defendants' conduct, as described herein, took place within the State of Illinois and constitutes unfair or deceptive acts or practices in the course of trade and commerce, in violation of 815 ICFA § 505/1, *et seq.*

175. Defendant violated the ICFA by representing that the Products have characteristics or benefits that they do not have. 815 ILCS § 505/2; 815 ILCS § 510/2(7).

176. Defendant advertised the Products with the intent not to sell them as
advertised, in violation of 815 ILCS § 505/2 and 815 ILCS § 510/2(9).

177. Defendant engaged in fraudulent and/or deceptive conduct, which creates a likelihood of confusion or misunderstanding in violation of 815 ILCS § 505/2; 815 ILCS § 510/2(3).

178. Before placing the Products into the stream of commerce and into the hands of consumers, including Plaintiff and reasonable consumers, Defendants knew

1 or should have known that the Products had a serious defect, and were otherwise not
2 able to safely or reliably function as intended and created a serious risk of infant injury
3 or death, but Defendants omitted and concealed this material fact to consumers,
4 including Plaintiffs and Illinois Subclass members, by continuing to place the Products
5 into the stream of commerce without any notice or disclosure of the material defect.

6 179. Defendants chose to market the Products in this way to impact consumer
7 choices and gain market share. They are aware that all consumers who purchased the
8 Products were exposed to and would be affected by their misrepresentations and
9 omissions and would reasonably believe that the Products safely and reliably
10 functioned and were safe for use by the user, and that Defendants' marketing materials,
11 including representations and omissions, were otherwise accurate. However,
12 Defendants' representations are false and misleading because the Products contain a
13 material defect, are not safe for use by its user, and do not function safely or reliably.

14 180. Defendants then chose to remedy this material defect by providing
15 consumers with an inadequate recall procedure.

16 181. Defendant intended that Plaintiffs and each of the other Illinois Subclass
17 members would reasonably rely upon the representations, misleading
18 characterizations, and material omissions concerning the true nature of the Products.

19 182. Defendants' representations, concealment, omissions, and other deceptive
20 conduct were likely to deceive and cause misunderstanding and/or cause Plaintiffs and
21 the other Illinois Subclass members to be deceived about the true nature of the
22 Products.

23 183. Plaintiff O'Rourke and Illinois Subclass Members have been damaged as
24 a proximate result of Defendants' violations of the ICFA. They have suffered damages
25 as a direct and proximate result of purchasing the Products.

26 184. As a direct and proximate result of Defendants' violations of the ICFA, as
27 set forth above, Plaintiff O'Rourke and the Illinois Subclass members have suffered

1 ascertainable losses of money caused by Defendants' representations and material
2 omissions regarding the ability of the Products to function as intended, specifically
3 related to the safety of the Products.

4 185. Had they been aware of the true nature of the Noticed Products, Plaintiff
5 O'Rourke and Illinois Subclass Members would have paid less for the Products or
6 would not have purchased them.

7 186. Based on Defendant's unfair and/or deceptive acts or practices, Plaintiff
8 O'Rourke and the Illinois Subclass members are entitled to relief, including restitution,
9 actual damages, treble damages, punitive damages, costs, and attorney's fees, under
10 815 ILCS § 505/10a. Plaintiff O'Rourke and Illinois Subclass members are also entitled
11 to injunctive relief, seeking an order enjoining Defendant's unfair and/or deceptive acts
12 or practices.

13 **COUNT II**

14 **Violations of New York's Consumer Protection Statute**
N.Y. Gen. Bus. Law §§ 349 *et seq.*

15 **(Plaintiff Gates Individually and on Behalf of the New York Subclass)**

16 187. Plaintiff Gates, individually and on behalf of the New York Subclass,
17 brings this cause of action and hereby adopts and incorporates by reference the
18 allegations contained in all preceding paragraphs as though fully set forth herein.

19 188. New York General Business Law § 349 ("GBL § 349") prohibits
20 "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in
21 the furnishing of any service."

22 189. Defendant's actions regarding manufacturing, marketing, selling and
23 distributing the Products, as described herein, are deceptive acts or practices in the
24 conduct of the business trade or commerce.

25 190. N.Y. Gen. Bus. Law § 349(h) provides that "any person who has been
26 injured by reason of any violation of this section may bring an action in his own name

1 to enjoin such lawful act or practice, an action to recover his actual damages or fifty
2 dollars, whichever is greater, or both such actions.”

3 191. Plaintiff Gates and the New York Subclass Members have been injured
4 by Defendants’ violations of the GBL as detailed throughout this Complaint.

5 192. Plaintiff Gates and the other New York Subclass Members reasonably
6 relied upon Defendants’ misrepresentations and omissions alleged herein regarding the
7 Products, specifically regarding the safety of the Products for infant sleep.

8 193. Before placing the Products into the stream of commerce and into the
9 hands of consumers, including Plaintiffs and reasonable consumers, Defendants knew
10 or should have known that the Products had a serious defect, and were otherwise not
11 able to safely or reliably function as intended and created a serious risk of infant injury
12 or death, but Defendants omitted and concealed this material fact to consumers,
13 including Plaintiff Gates and New York Subclass members, by continuing to place the
14 Products into the stream of commerce without any notice or disclosure of the material
15 defect.

16 194. Defendants chose to market the Products in this way to impact consumer
17 choices and gain market share. They are aware that all consumers who purchased the
18 Products were exposed to and would be affected by their misrepresentations and
19 omissions and would reasonably believe that the Products safely and reliably
20 functioned and were safe for use by the user, and that Defendants’ marketing materials,
21 including representations and omissions, were otherwise accurate. However,
22 Defendants’ representations are false and misleading because the Products contain a
23 material defect, are not safe for use by its user, and do not function safely or reliably.

24 195. Defendant engaged in its unlawful conduct as alleged herein willfully,
25 wantonly, and with reckless disregard for the truth.

26 196. Plaintiff Gates and other Class Members have been injured inasmuch as
27 they, having viewed the misrepresentations and omissions regarding safety, and paid a

1 premium for the Products. Accordingly, Plaintiff Gates and other Class Members paid
2 more than the Products they bargained for and received were worth.

3 197. Defendants conduct as alleged herein constitutes a deceptive act and
4 practice in business conduct violating New York General Business Law § 349(a), and
5 Plaintiff and other Class Members have been damaged thereby.

6 198. As a result of Defendant's deceptive acts and practices, Plaintiff and other
7 Class Members are entitled to monetary and compensatory damages, interest, and
8 attorneys' fees and costs. This includes damages under GBL § 349 and statutory
9 damages of \$50 per unit purchased pursuant to GBL § 349.\

COUNT III

**VIOLATION OF THE NEW YORK'S CONSUMER PROTECTION LAW
("NYGBL") §350, ET SEQ.**
(Plaintiff Gates Individually and on Behalf of the New York Subclass)

(Plaintiff Gates Individually and on Behalf of the New York Subclass)

14 199. Plaintiff Gates, individually and on behalf of the New York Subclass,
15 brings this cause of action and hereby adopts and incorporates by reference the
16 allegations contained in all preceding paragraphs as though fully set forth herein.

17 200. N.Y. General Bus. L. § 350, et seq. (“GBL § 350”) makes “[f]alse
18 advertising in the conduct of any business, trade or commerce or in the furnishing of
19 any service” in New York unlawful. GBL § 350 provides that “[i]n determining
20 whether any advertising is misleading, there shall be taken into account (among other
21 things) not only representations made by statement, word, device, sound or any
22 combination thereof, but also the extent to which the advertising fails to reveal facts
23 material in the light of such representations with respect to the commodity ... to which
24 the advertising relates under the conditions prescription in said advertisement, but also
any such conditions as are customary and usual.”

26 201. Throughout the Class Period, by advertising, marketing and/or selling the
27 Products with claims that they are safe for infant sleep to Plaintiff and other Class and

1 Sub-Class Members, Defendants engaged in, and continues to engage in, false
2 advertising concerning the safety of the Products.

3 202. Plaintiffs and other Class and Subclass Members seek to enjoin such false
4 advertising as described above. Each of the Class and Subclass Members will be
5 irreparably harmed unless the unlawful actions of Defendants are enjoined in that
6 Plaintiff and Class and Subclass Members will continue to be unable to rely on
7 Defendants' representations regarding the safety of the Product.

8 203. Defendants' marketing and advertising of the Product were likely to
9 mislead reasonable consumers acting reasonably under the circumstances.

10 204. Plaintiff would not have purchased the Product from Defendants and/or
11 would not have paid as much for them had they known about the Defect and the
12 inadequate remedy.

13 205. Plaintiff was injured in fact and lost money as a result of Defendants'
14 conduct. Plaintiff paid for a safe infant swing, but did not receive such products. The
15 products Plaintiff received were worth less than the products for which they paid.

16 206. Defendants engaged in unlawful conduct as alleged herein willfully,
17 wantonly, and with reckless disregard for the truth.

18 207. Defendants' material misrepresentations and omissions were uniform.

19 208. As a result of Defendants' acts and practices in violation of GBL § 350,
20 Plaintiff and Class and Subclass members are entitled to monetary and compensatory
21 damages, restitution, and disgorgement of all monies obtained using Defendants'
22 unlawful conduct, interest, and attorneys' fees and costs, as well as statutory damages
23 of \$500 per Product purchased.

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CLASS ACTION COMPLAINT

COUNT IV
Breach of Implied Warranties
**(Plaintiffs Individually and on Behalf of the Nationwide Class or, in the
alternative, the Subclasses)**

209. Plaintiffs, individually and on behalf of the Nationwide Class, bring this cause of action and hereby adopts and incorporates by reference the allegations contained in all preceding paragraphs as though fully set forth herein.

210. Defendants are and were at all relevant times a merchant involved in the manufacturing, distributing, warranting, and/or selling of the Products.

211. The Products were and are, at all relevant times, “goods” within the relevant laws.

212. Defendants knew or had reason to know of the specific use for which the Products, as goods, were purchased.

213. Defendants entered into agreements with retailers, suppliers, and/or contractors to sell its Product to be used by Plaintiffs and Class Members.

214. Defendants provided Plaintiffs and Class Members with implied warranties that the Products were merchantable and fit for the ordinary purposes for which the Products were used and sold and were not otherwise injurious to consumers, that the Products would pass without objection in the trade, be of fair and average quality, and conform to the promises and affirmations of fact made by Defendants in its misrepresentations and omissions regarding safety. This implied warranty of merchantability is part of the basis for the benefit of the bargain between Defendants and Plaintiffs and Class Members.

215. Defendants breached the implied warranty of merchantability because the Products are not fit for their ordinary purpose of providing a reasonably safe infant product that is suitable for infant sleep because, *inter alia*, the Products contains the Defect rendering the Products unsafe and unsuitable for infant sleep, and unreasonably dangerous. Therefore, the Product is not fit for its particular purpose.

1 216. Plaintiffs were forced to completely discontinue use of the Products
2 shortly after their purchases when the Defect was discovered due to the ongoing safety
3 risk of placing their infants in an unsafe sleeping environment.

4 217. The aforementioned problems associated with Products constitute safety
5 risks, such that the Product is not safe nor suitable for infant sleep, and therefore, there
6 is a breach of the implied warranty of merchantability.

7 218. Moreover, due to the inadequate and unfair nature of the Recall, it is not
8 required and would be futile for Plaintiffs to provide Defendants further opportunity to
9 cure their breach.

10 219. Plaintiffs and Class Members have had sufficient direct dealings with
11 either Defendants or one of their authorized retailers, representatives, and agents to
12 establish privity of contract between Defendants, on the one hand, and Plaintiffs and
13 each Class Member, on the other hand.

14 220. Privity is not required because Plaintiffs and each of the Class Members
15 are the intended beneficiaries of Defendants' warranties and its sale through retailers.
16 The retailers were not intended to be the ultimate consumers of the Products and have
17 no rights under the warranties provided by Defendants. Defendants' warranties were
18 designed for and intended to benefit the consumer only and Plaintiffs and Class
19 Members were the intended beneficiaries of the Products. Thus, it was reasonably
20 foreseeable that Plaintiffs and Class Members would be the intended beneficiary of the
21 Product and warranties.

22 221. Defendants impliedly warranted that the Products are safe, suitable for
23 infant sleep, of merchantable quality, and fit for their intended purpose. These implied
24 warranties included, among other things: (i) a warranty that the Product manufactured,
25 supplied, distributed, and/or sold by Defendants was safe and suitable for infant sleep;
26 (ii) a warranty that the Product would be fit for its intended use while the Product is

1 being used; and (iii) a warranty that the Product would conform to all of the promises
2 and affirmations of fact on the Product's label and online advertising.

3 222. Instead, the Product contains a defective design and/or manufacture, as
4 alleged herein. As a result of the Defect, the Product fails to conform with the promises
5 or affirmations of fact on its label and online advertising.

6 223. Defendants failed to adequately warn Plaintiffs and Class Members that
7 the Products contained the Defect, were not safe or suitable for infant sleep, and could
8 and have caused infants to be placed in dangerous sleep positions, suffocate, and die.

9 224. Defendants breached the implied warranties because the Products were
10 and are sold with the Defect, which prevents the Products from even the most basic
11 degree of fitness for ordinary use as a reliable and safe sleeping product.

12 225. Defendants' attempt to limit or disclaim any implied warranties is
13 unconscionable and therefore unenforceable.

14 226. Plaintiffs' complete inability to use the Products for their intended
15 purpose, resulting from the fact that the Products did not meet the most basic degree of
16 fitness for providing a safe sleep space for infants, renders any attempts to limit or
17 disclaim damages substantively unconscionable.

18 227. Plaintiffs and Class Members had no meaningful choice in determining
19 the terms of which unreasonably favored Defendants, who had superior and exclusive
20 knowledge of the Defect, which existed at the time of sale of the Product. A gross
21 disparity in bargaining power existed between Defendants, and Plaintiffs and the Class
22 Members, and Defendants knew or should have known that the Product was defective
23 at the time of sale and would fail before its useful life.

24 228. Contrary to the applicable implied warranties, the Products, at the time of
25 sale and thereafter, were not fit for its ordinary and intended purpose of providing a
26 safe sleeping space for infants. Instead, the Products suffered, and continue to suffer,
27 from the Defect as alleged herein.

1 229. Defendants' failure to adequately repair or replace the dangerous Product
2 caused the warranty to fail in its essential purpose.

3 230. As a direct and proximate result of the foregoing, Plaintiffs and the Class
4 Members suffered, and continue to suffer, financial damage and injury, and are entitled
5 to all damages, in addition to costs, interest and fees, including attorneys' fees, as
6 allowed by law.

COUNT V

Unjust Enrichment

(Plaintiffs Individually and on Behalf of the Nationwide Class and, in the alternative the Subclasses)

10 231. Plaintiffs, individually and on behalf of the Nationwide Class and/or the
11 Illinois and New York Subclasses, bring this cause of action in the alternative and
12 hereby adopts and incorporates by reference the allegations contained in all preceding
13 paragraphs as though fully set forth herein.

14 232. Defendants' unfair and unlawful conduct includes, among other things,
15 designing, manufacturing, and selling the Products with the dangerous Defect as well
16 as making false and misleading representations about the Products through its
17 misrepresentations and omissions regarding safety such as representing that is safe and
18 suitable for infants sleeping on their backs. Defendants falsely represented the Product
19 as being safe and suitable for infant sleep in its packaging, labeling, marketing,
20 advertising, and promotions. Contrary to these representations, the Products pose an
21 unreasonable risk of serious injury and death to infants.

22 233. Defendants have continued to tout the safety of the Products even though
23 the Products can and have caused numerous infants to roll from their backs to
24 dangerous sleeping positions due to the Defect.

234. While Plaintiffs and Class Members were harmed at the time of purchase,
235 Defendants were unjustly enriched by their misrepresentations, false statements and/or
236 material omissions.

1 235. Plaintiffs and Members of the Class were harmed when they purchased
2 Defendants' Product as a result of Defendants' misrepresentations, false statements
3 and/or material omissions, as described in this Complaint. Plaintiffs and the Class
4 Members purchased Defendants' Product. Plaintiffs and the Class Members have
5 suffered injury in fact and lost money as a result of paying the price they paid for the
6 Product due to Defendants' unlawful, unfair, and fraudulent business practices.

7 236. Defendants' conduct allows them to knowingly realize substantial
8 revenues from selling the Product at the expense of, and to the detriment of, Plaintiffs
9 and Class Members, and to Defendants' benefit and enrichment. Defendants' retention
10 of these benefits violates fundamental principles of justice, equity, and good
11 conscience.

12 237. Plaintiffs and Class Members conferred significant financial benefits and
13 paid substantial compensation to Defendants for the Product, which was not as
14 Defendants represented it to be.

15 238. Under common law principles of unjust enrichment and quasi-contract, it
16 is inequitable for Defendants to retain the benefits conferred by Plaintiffs' and Class
17 Members' overpayments.

18 239. Plaintiffs and Members of the Classes seek disgorgement of all profits
19 resulting from such overpayment.

COUNT VI

Fraud

(Plaintiffs Individually and on Behalf of the Nationwide Class and, in the alternative the Subclasses)

24 240. Plaintiffs, individually and on behalf of Nationwide Class and, in the
25 alternative, the Subclasses, brings this cause of action and hereby adopts and
26 incorporates by reference the allegations contained in all preceding paragraphs as
27 though fully set forth herein.

CLASS ACTION COMPLAINT

1 241. Defendants knew or should have known that the Products contain the
2 dangerous Defect rendering the Products unsafe and unsuitable for infant sleep.

3 242. Defendants provided Plaintiffs and Nationwide Class Members with false
4 or misleading material information and failed to disclose material facts about the true
5 nature of the Products, including but not limited to the fact they contain the dangerous
6 Defect rendering the Products unsafe and unsuitable for infant sleep contrary to
7 Defendants' misrepresentations.

8 243. Defendants promised consumers that the Products were fit for their
9 intended purpose and that they were free of defects and safe and suitable for infant
10 sleep through its misrepresentations and omissions regarding safety.

11 244. Defendants had exclusive knowledge of the Products' Defect at the time
12 of sale and at all other relevant times. Neither Plaintiffs nor Class Members, in the
13 exercise of reasonable diligence, could have independently discovered the true nature
14 of the Products prior to purchase.

15 245. Defendants had the capacity to, and did, deceive Plaintiffs and Class
16 Members into believing they were purchasing a product that was safe and suitable for
17 infant sleep.

18 246. Defendants undertook active and ongoing steps to conceal the presence of
19 the Defect in the Products. Plaintiffs are not aware of anything in Defendants'
20 advertising, publicity, or marketing materials that disclosed the truth about the
21 Products, despite Defendants' awareness of the problem.

22 247. The facts concealed and/or not disclosed by Defendants to Plaintiffs and
23 Class Members are material facts in that a reasonable person would have considered
24 them fundamental in deciding whether to purchase (or pay the same price for) the
25 Product.

26 248. Defendants intentionally concealed and/or failed to disclose material facts
27 for the purpose of inducing Plaintiffs and Class Members to act thereon.

1 249. Defendants failed to adequately warn Plaintiffs and Class Members that
2 the Products contained the Defect, were not safe or suitable for infant sleep, and could
3 and have caused infants to be placed in dangerous sleep positions, suffocate, and die.

4 250. Plaintiffs and Class Members justifiably acted or relied upon the
5 concealed and/or nondisclosed facts to their detriment, as evidenced by their purchase
6 of the Products.

7 251. The misrepresentations and omissions made by Defendants, upon which
8 Plaintiffs and Class Members reasonably and justifiably relied, were intended to
9 induce and actually induced Plaintiffs and Class Members to purchase the Products.

10 252. Plaintiffs and Class Members suffered a loss of money in an amount to be
11 proven at trial as a result of Defendants' fraudulent concealment and nondisclosure
12 because they would not have purchased the Products, or would not have purchased the
13 Products for the price they did, if the true facts concerning the Products had been
14 known.

15 253. Plaintiffs and Class Members are entitled to all relief the Court proper as
16 a result of Defendants' actions described herein.

COUNT VII
Negligent Misrepresentation
**(Plaintiffs Individually and on Behalf of the Nationwide Class and, in the
alternative the Subclasses)**

254. Plaintiffs, individually and on behalf of the Nationwide Class, or
21 alternatively the Subclasses, bring this cause of action and hereby adopt and
22 incorporate by reference the allegations contained in all preceding paragraphs as
23 though fully set forth herein.

24 255. As a seller of the Products, Defendants had a duty to give correct
25 information to Plaintiffs and Class Members regarding the truth and accuracy regarding
26 the material facts concerning the serious safety risks posed by the Products, including

1 knowledge of the Defect. Defendants had sole possession and control of this
2 information and had a duty to disclose it accurately to Plaintiffs and Class Members.

3 256. Defendants created a special relationship with Plaintiffs and Class
4 Members through their misrepresentations and omissions regarding safety and through
5 their designing, manufacturing, marketing, and selling the Product as a product
6 specifically suitable for infant back sleep.

7 257. Defendants intended the sale of the Products not only to affect Plaintiffs
8 and Class Members, but Defendants actually considered the particular needs of
9 caregiving consumers and designed, manufactured, and sold the Products for those
10 consumers to meet their particular needs.

11 258. Defendants held or appeared to hold unique or special expertise and
12 knowledge of safe infant sleep and products for safe infant sleep. Defendants and
13 Plaintiffs, as well as Class Members, had a special relationship of trust and confidence,
14 and Defendants persuaded Plaintiffs and Class Members to purchase the Products
15 based on their misrepresentations and reputation of having expertise and knowledge.

16 259. Defendants made misrepresentations to Plaintiffs and Class Members
17 through their misrepresentations and omissions regarding safety, *inter alia*, that the
18 Products are safe and suitable for infant sleep. These misrepresentations were made
19 with the direct purpose of inducing Plaintiffs and Class Members into purchasing the
20 Product

21 260. Because the Defect in the Products could not be detected until after it
22 manifested, and because Defendants have denied and purposefully concealed the
23 defective nature of the Products and the serious safety risks caused by the Defect,
24 Plaintiffs and the Class Members were not reasonably able to discover the Defect,
25 despite their exercise of due diligence.

26 261. Defendants knew, or otherwise should have known, that the Products
27 contained the Defect and posed serious safety risks to infants, based upon: (1)

1 Defendants' own internal testing, data, and surveys; (2) Defendants' Recall; and (3)
2 the multiple reports of infant death in the Products.

3 262. Despite Defendants' knowledge of material facts concerning the existence
4 of the serious safety risks posed by the Products, Defendants actively concealed the
5 serious safety risks from consumers by failing to disclose the serious safety risks to
6 consumers.

7 263. Defendants omitted, concealed, and failed to disclose to consumers that
8 the Products pose serious safety risks to infants, including that the Products are
9 inherently defective; unreasonably dangerous; not fit to be used for their intended
10 purpose; and/or are capable of causing serious injury and death to infants. Rather than
11 disclose this information, Defendants marketed the Products as safe and suitable for
12 their intended purpose, infant sleep.

13 264. The facts concealed and/or not disclosed by Defendants to consumers,
14 including Plaintiffs and other Class Members, were material, in part, because they
15 concerned an essential aspect of the Product, including the intended use and safety.
16 Such facts affect the conduct of purchasers, and a reasonable person would have
17 considered those facts to be important in deciding whether to purchase the Product.
18 Rather than disclose this information, Defendants marketed and labeled the Product as
19 a safe infant sleeper.

20 265. Defendants intentionally concealed and/or failed to disclose such material
21 facts for the purpose of inducing consumers, including Plaintiffs and other Class
22 Members, to purchase the Products.

23 266. Plaintiffs and other Class Members, without knowledge of the true nature
24 of the Products, justifiably acted or relied upon the concealed and/or nondisclosed
25 material facts to their detriment, as evidence by their purchase of the Products.

26 267. As a direct and proximate result of Defendants' concealment and/or
27 nondisclosure of material facts, consumers, including Plaintiffs and other Class

CLASS ACTION COMPLAINT

1 Members have been damaged as alleged herein, and are entitled to recover damages.
2 Plaintiffs and other Class Members would not have purchased the Products on the same
3 terms had they known that the Products posed serious safety risks to their infants.

4 268. Plaintiffs and Class Members are entitled to all relief the Court finds
5 proper as a result of Defendants' conduct described herein.

COUNT VIII

Negligence – Failure to Warn

(Plaintiffs Individually and on Behalf of the Nationwide Class and, in the alternative, the Subclasses)

9 269. Plaintiffs, individually and on behalf of the Nationwide Class, or
10 alternatively the Subclasses, bring this cause of action and hereby adopt and
11 incorporate by reference the allegations contained in all preceding paragraphs as
12 though fully set forth herein.

13 270. Defendants directly or indirectly caused the Products to be sold,
14 distributed, packaged, labeled, marketed, promoted, and/or used by Plaintiffs and the
15 other Class Members.

16 271. At all times relevant, Defendants had a duty to exercise reasonable care in
17 the design, testing, research, manufacture, marketing, advertisement, supply,
18 promotion, packaging, sale, and distribution of the Products, including the duty to take
19 all reasonable steps necessary to manufacture, promote, and/or sell a product that was
20 not unreasonably dangerous to consumers and users of the Products.

21 272. At all times relevant, Defendants had a duty to exercise reasonable care in
22 the marketing, advertisement, and sale of the Products. Defendants' duty of care owed
23 to consumers and the general public included providing accurate, true, and correct
24 information concerning the risks of using the Products and appropriate, complete, and
25 accurate warnings concerning the potential safety risks regarding the use of the
26 Products, and, in particular, its uniform Defect.

1 273. At all times relevant, Defendants knew or, in the exercise of reasonable
2 care, should have known of the safety hazards and dangers the Products and,
3 specifically, the uniform Defect.

4 274. Defendants knew, or otherwise should have known, that the Products
5 posed serious safety risks to infants, including Plaintiffs' and the other Class Members'
6 infants, based upon: (1) their own internal testing, data, and surveys; (2) Defendants'
7 Recall; and (3) the multiple reports of infant death in the Products.

8 275. Accordingly, at all times relevant, Defendants knew or, in the exercise of
9 reasonable care, should have known that use of the Products created a dangerous and
10 unreasonable risk of injury and death to the infants using the Products, including
11 Plaintiffs' and the other Class Members' infants.

12 276. Defendants also knew or, in the exercise of reasonable care, should have
13 known that users and consumers of the Products were unaware of the safety risks and
14 the magnitude of the safety risks associated with use of the defective Products.

15 277. Defendants omitted, concealed, and failed to disclose to consumers that
16 the Products pose serious safety risks to infants, including that the Products were
17 inherently defective; unreasonably dangerous; not fit to be used for their intended
18 purpose; contained a Defect; and created an unsafe sleeping environment for infants.

19 278. Defendants failed to adequately warn Plaintiffs and Class Members that
20 the Products contained the Defect, were not safe or suitable for infant sleep, and could
21 and have caused infants to be placed in dangerous sleep positions, suffocate, and die.
22 Rather than disclose this information, Defendants, through its misrepresentations and
23 omissions, *inter alia*, marketed the Products as safe and suitable for infant sleep.

24 279. A reasonable manufacturer, distributor, or seller of the Products, under the
25 same or similar circumstances, would have warned of the danger or instructed on safe
26 use of Products.

1 280. Defendants did not warn of the particular risks associated with the
2 Products as detailed above, for reasons which fell below the acceptable standard of
3 care, *i.e.*, about which a reasonably prudent manufacturer would have known and
4 warned.

5 281. As such, Defendants breached the duty of reasonable care and failed to
6 exercise ordinary care in the design, research, development, manufacture, testing,
7 marketing, supply, promotion, advertisement, packaging, sale, and distribution of the
8 Products, in that Defendants manufactured, marketed, promoted, and sold the Products
9 with the uniform Defect, knew or had reason to know of the Defect inherent in the
10 Products, knew or had reason to know that an infant's use of the Products created a
11 significant risk of serious injury and death and is unreasonably dangerous for infants,
12 and failed to prevent or adequately warn of these risks and injuries.

13 282. In breach of its duties, Defendants negligently:

- a. Failed to design, manufacture, formulate, and package the Products without the uniform Defect;
 - b. Designed, manufactured, and formulated the Products such that they contained the uniform Defect;
 - c. Failed to conduct adequate research and testing to determine the extent to which the Products were likely to cause infants to be placed in dangerous sleep positions; and
 - d. Failed to warn that the Products could and have caused infants to be placed in dangerous sleep positions, suffocate, and die.

23 283. Despite an ability and means to investigate, study, and test the Products
24 and to provide adequate warnings, Defendants have failed to do so. Indeed, Defendants
25 have wrongfully concealed information and have further made false and/or misleading
26 statements concerning the safety of the Products.

1 284. Defendants knew, or otherwise should have known, that it was foreseeable
2 that consumers' infants, including Plaintiffs' and the other Class Members' infants,
3 would be placed at risk of serious injury and death as a result of Defendants' failure to
4 exercise ordinary care in the manufacturing, marketing, promotion, labeling,
5 distribution, and sale of the Products.

6 285. Plaintiffs and the other Class Members did not know the nature and extent
7 of the injuries that could result from the intended use of the Products.

8 286. Defendants' negligence was the proximate cause of the injuries, harm, and
9 economic losses that Plaintiffs and the other Class Members suffered, as described
10 herein, including the injuries suffered by Plaintiffs' and the other Class Members'
11 infants.

12 287. Defendants' failure to warn or instruct was a substantial factor in causing
13 Plaintiffs' and other Class Members' harm.

14 288. Defendants' conduct, as described above, was reckless. Defendants
15 regularly risked the lives of consumers and users of the Products, including Plaintiffs
16 and the other Class Members and their infants, with full knowledge of the dangers of
17 the Products. Defendants made conscious decisions not to redesign, re-label, warn, or
18 inform the unsuspecting public, including Plaintiffs and the other Class Members.
19 Defendants' reckless conduct therefore warrants an award of aggravated or punitive
20 damages.

21 289. As a direct and proximate result of Defendants' wrongful acts and
22 omissions in placing the defective Products into the stream of commerce without
23 adequate warnings of the risks of serious injury and death to infants, Plaintiffs and the
24 other Class Members have been damaged and their infants have been placed at risk of
25 serious injury and death.

PRAYER FOR RELIEF

27 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly

CLASS ACTION COMPLAINT

1 situated, respectfully requests that this Court:

- 2 a. Declaring that this action is a proper class action, certifying the Classes as
3 requested herein, designating Plaintiffs as Class Representatives and
4 appointing the undersigned counsel as Class Counsel;
- 5 b. Ordering payment of actual and punitive damages, restitution and
6 disgorgement of all profits and unjust enrichment that Defendants
7 obtained from Plaintiffs and the Class Members as a result of Defendants'
8 unlawful, unfair and fraudulent business practices;
- 9 c. Ordering injunctive relief as permitted by law or equity, further
10 permanently enjoining Defendants from continuing the unlawful practices
11 as set forth herein, issuing a state-of-the-art notice program for the wide
12 dissemination of a factually accurate recall notice for the Products and the
13 implementation of a corrective advertising campaign to alert caregivers to
14 the dangers of inclined swings marketed for infant sleep, including the
15 Product, and educating them about the standards for safe infant sleep by
16 Defendants, and an offer to replace the Product with a reasonable and safe
17 infant product;
- 18 d. Ordering Defendants to pay attorneys' fees and litigation costs to
19 Plaintiffs and the other members of the Classes;
- 20 e. Ordering Defendants to pay both pre- and post-judgment interest on any
21 amounts awarded; and
- 22 f. Ordering such other and further relief as may be just and proper.

23 **JURY DEMAND**

24 Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

25 DATED: November 18, 2024

26
27 */s/ Kyle McLean*
28 Kyle McLean (SBN 330580)

CLASS ACTION COMPLAINT

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